

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RIDGELEA INVESTMENTS, INC. NOTICE OF	)	
SURRENDER AND ABANDONMENT OF UTILITY	)	
PROPERTY NAMELY THREE (3) FRANKLIN	)	CASE NO. 2016-00106
COUNTY WASTEWATER TREATMENT PLANTS	)	

NOTICE OF FILING

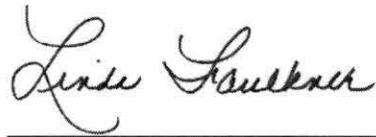
Notice is given to all parties that the following materials have been filed into the record of this proceeding:

- The digital video recording of the evidentiary hearing conducted on May 3, 2016 in this proceeding;
- Certification of the accuracy and correctness of the digital video recording;
- All exhibits introduced at the evidentiary hearing conducted on May 3, 2016 in this proceeding;
- A written log listing, *inter alia*, the date and time of where each witness' testimony begins and ends on the digital video recording of the evidentiary hearing conducted on May 3, 2016.

A copy of this Notice, the certification of the digital video record, hearing log, and exhibits have been electronically served upon all persons listed at the end of this Notice. Parties desiring an electronic copy of the digital video recording of the hearing in Windows Media format may download a copy at [http://psc.ky.gov/av\\_broadcast/2016-00106/2016-00106\\_03May16\\_Inter.aspx](http://psc.ky.gov/av_broadcast/2016-00106/2016-00106_03May16_Inter.aspx). Parties wishing an annotated digital video

recording may submit a written request by electronic mail to [pscfilings@ky.gov](mailto:pscfilings@ky.gov). A minimal fee will be assessed for a copy of this recording.

Done at Frankfort, Kentucky, this 6<sup>th</sup> day of May 2016.

A handwritten signature in cursive script, reading "Linda Faulkner".

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Linda Faulkner  
Director, Filings Division  
Public Service Commission of Kentucky

John B Baughman  
Hazelrigg & Cox, LLP  
415 West Main Street  
P.O. Box 676  
Frankfort, KENTUCKY 40602

Ridgelea Investments, Inc.  
2106 W North Bend Road  
Cincinnati, OH 45224

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:


RIDGELEA INVESTMENTS, INC. NOTICE OF	)	
SURRENDER AND ABANDONMENT OF	)	CASE NO. 2016-00106
UTILITY PROPERTY NAMELY THREE (3)	)	
FRANKLIN COUNTY WASTEWATER	)	
TREATMENT PLANTS	)	

CERTIFICATE

I, Sonya Harward, hereby certify that:

1. The attached DVD contains a digital recording of the Hearing conducted in the above-styled proceeding on May 3, 2016. Hearing Log, Exhibit, Exhibit List, and Witness List are included with the recording on May 3, 2016.
2. I am responsible for the preparation of the digital recording.
3. The digital recording accurately and correctly depicts the Hearing of May 3, 2016.
4. The Exhibit List attached to this Certificate correctly lists the Exhibit introduced at the Hearing of May 3, 2016.
5. The Hearing Log attached to this Certificate accurately and correctly states the events that occurred at the Hearing of May 3, 2016 and the time at which each occurred.

Given this 4<sup>th</sup> day of May, 2016.

  
\_\_\_\_\_  
Sonya Harward (Boyd), Notary Public  
State at Large  
My commission expires: August 27, 2017





## Session Report - Detail

2016-00106\_3May2016

Ridgelea Investments

Date:	Type:	Location:	Department:
5/3/2016	Other	Hearing Room 1	Hearing Room 1 (HR 1)

Judge: Bob Cicero; Dan Logsdon

Witness: Charles Hungler

Clerk: Sonya Harward

Event Time	Log Event
8:46:39 AM	Session Started
8:46:41 AM	Session Paused
9:02:51 AM	Session Resumed
9:02:55 AM	Vice Chairman Dan Logsdon Introduces Case 2016-00106
9:03:12 AM	Vice Chairman Logsdon Introductions
	Note: Harward, Sonya Introduces Commissioner Bob Cicero.
9:03:53 AM	Atty. John Baughman for Ridgelea
	Note: Harward, Sonya Also introduces his client, Charles Hungler.
9:04:14 AM	Attys. John Park and David Spenard for PSC
9:04:24 AM	Public Notice Has Been Given
	Note: Harward, Sonya Atty. Baughman will file it into the record.
9:04:38 AM	No Outstanding Motions
9:04:42 AM	Vice Chairman Logsdon calls for Public Comments
9:04:46 AM	Atty. Baughman - Statement
	Note: Harward, Sonya He notes that there are a few supporters in the audience who are not parties, but whom the PSC can call as witnesses. They include Huston Wells, Robert Hewitt, Ann Northcutt, and Allan Alsip.
9:05:20 AM	Vice Chairman Logsdon - Response
	Note: Harward, Sonya Any or all may provide public comments.
9:05:35 AM	Public Comment-Alan Alsip, Chairman of Farmdale Sanitation District
	Note: Harward, Sonya Farmdale is willing to accept the package treatment plants that being given up.
9:05:57 AM	Camera Lock PTZ Activated
9:06:35 AM	Public Comment-Huston Wells, Franklin Co. Judge Executive
	Note: Harward, Sonya Gives some background about the Farmdale Sanitation District, and notes that it is not operational yet and has no infrastructure at this time but they are ready to take over the abandoned plants.
9:08:56 AM	Camera Lock Deactivated
9:08:59 AM	Witness sworn in
9:09:57 AM	Atty. Baughman direct exam of Witness Hungler
	Note: Harward, Sonya Goes over some background of Ridgelea.
9:11:39 AM	Atty. Park Cross Exam of Witness Hungler
	Note: Harward, Sonya Asking about the shareholders, officers, and directors of Ridgelea.
9:13:15 AM	POST HEARING DATA REQUEST by Atty. Park
	Note: Harward, Sonya Provide the minutes of the board meetings.
9:14:05 AM	Atty. Park to Witness Hungler
	Note: Harward, Sonya Asking for the witness's relationship with Perfecta Waste.
9:14:48 AM	Atty. Park to Witness Hungler
	Note: Harward, Sonya Asking witness about maintaining books.
9:15:06 AM	POST HEARING DATA REQUEST by Atty. Park
	Note: Harward, Sonya Tax returns for last 3 years that returns have been filed.

9:15:37 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Asking witness if he is aware that he must request authorization from the Commission to cease providing service.
9:16:00 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Referencing Notice of Abandonment.
9:17:06 AM	Atty. Park to Witness Hungler (answered by Atty. Baughman) Note: Harward, Sonya	Asking about a case pending before the Franklin Circuit Court.
9:17:32 AM	Atty. Baughman - Interjection Note: Harward, Sonya	There is an order signed on April 22 holding the case before the Franklin Circuit Court in abeyance.
9:17:40 AM	POST HEARING DATA REQUEST by Atty. Park Note: Harward, Sonya	Provide the copy of the order of abeyance from the Franklin Circuit Court.
9:17:55 AM	PSC - Exhibit 1 Note: Harward, Sonya	Franklin Circuit Court, Civil Action No. 14-CI-00616, Energy and Environment Cabinet vs. Ridgelea Investments, Inc., et. al., dated April 8, 2016.
9:18:44 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Asking Witness to explain what the allegations are about in the Franklin Circuit Court action (referencing PSC-Exhibit 1 to this Hearing).
9:20:02 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Asking the witness about the case being held in abeyance.
9:20:20 AM	Atty. Park to Witness Hungler (answered by Atty. Baughman) Note: Harward, Sonya	Asking witness if there is a notice of appeal for the action in front of the Frankfort Circuit Court.
9:20:44 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Asking about corrective actions to be performed as ordered by the Franklin Circuit Court.
9:21:54 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Referencing PSC-Exhibit 1 to this Hearing, p. 7, regarding estimated cost of repairs.
9:23:00 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Asking witness what measures would need to be taken to bring the plants into compliance with the permits.
9:23:25 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Asking witness if there have been discussions with Division of Water about transferring the permits if the plants are transferred.
9:23:42 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Asking witness if he realizes that the PSC does not have jurisdiction over the permits.
9:23:58 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Asking Witness to describe the condition of the plants.
9:24:19 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Referencing the response to Comm. Staff's First Request for Information, Item 1, regarding the condition of the Edgewood plant, how long it will take to address the repairs needed, and its life expectancy.
9:25:15 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Referencing the response to Comm. Staff's First Request for Information, regarding the condition of the Meadowbrook plant, how long it will take to address the repairs needed, and its life expectancy.

9:26:14 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Referencing the response to Comm. Staff's First Request for Information, regarding the condition of the Farmgate plant, how long it will take to address the repairs needed, and its life expectancy.
9:27:07 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Asking witness if plants were operating when he took control, and when they were actually installed.
9:27:46 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Asking witness if he's made any repairs to the plants in the last 1.5 years.
9:28:21 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Asking witness what equipment has been replaced.
9:28:47 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Asking witness if he owns the real property that the plant sits on and the collection system, and who the certified operator is for the system.
9:30:14 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Asking witness if he'd be willing to transfer Ridgelea to Farmdale for nominal consideration.
9:30:29 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Asking witness if he agrees to surrender and transfer all books to Farmdale for the plants if the transfer is approved.
9:31:12 AM	POST HEARING DATA REQUEST by Atty. Park Note: Harward, Sonya	Provide a list of all assets.
9:31:43 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Asking witness if there are any liens, mortgages, etc. on the assets or property used to provide service.
9:32:29 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Referencing the response to Comm. Staff's First Request for Information, regarding the statement about representatives of Franklin County Government and Farmdale Sanitation District being willing to act as reciever of Ridgelea.
9:33:12 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Asking if witness has had any discussions with residents of the subdivision regarding them taking over the plant operations.
9:34:03 AM	Atty. Park to Witness Hungler Note: Harward, Sonya	Asking witness whether he had applied for a surcharge.
9:34:25 AM	Commissioner Cicero Cross Exam of Witness Hungler Note: Harward, Sonya	Asking witness about the \$100,000 in invoices he mentioned.
9:36:07 AM	Vice Chairman Logsdon Cross Exam of Witness Hungler Note: Harward, Sonya	Asking witness who he bought the plant from, what year the loan he mentioned was taken, and what the loan was for.
9:37:36 AM	Atty. Baughman - Closing Statement	
9:39:52 AM	POST HEARING DATA REQUEST by Atty. Park Note: Harward, Sonya	Provide any statements regarding the \$300,000 grant.
9:40:43 AM	Witness is dismissed.	
9:40:54 AM	Review of the Post Hearing Data Requests	
9:42:12 AM	Post Hearing Data Requests due May 17	
9:42:59 AM	Atty. Park - Statement Regarding Partial Abandonment of a Utility's Assets Note: Harward, Sonya	He suggests that a post-hearing conference be scheduled to discuss a transfer rather than an abandonment.
9:44:01 AM	Atty. Baughman - Response	
9:44:34 AM	Atty. Park - Remarks Concerning Briefs	
9:44:46 AM	Post-Hearing Brief due May 31	

9:45:14 AM	Atty. Baughman - Comment Regarding Transfer in lieu of Abandonment
9:45:43 AM	Hearing Adjourned
9:45:47 AM	Session Paused
9:47:25 AM	Session Resumed
9:47:28 AM	Session Paused
9:51:12 AM	Session Ended





## Exhibit List Report

2016-00106\_3May2016

Ridgelea Investments

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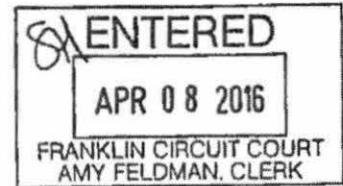
**Name:****Description:**

PSC - Exhibit 1

Franklin Circuit Court, Civil Action No. 14-CI-00616, Energy and Environment Cabinet vs. Ridgelea Investments, Inc., et. al., dated April 8, 2016.

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION II

CIVIL ACTION No. 14-CI-00616



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ENERGY AND ENVIRONMENT CABINET

PLAINTIFF

vs.

RIDGELEA INVESTMENTS, INC., et. al.

DEFENDANTS

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**OPINION AND ORDER**

This matter is before the Court on the Plaintiff's *Motion for Summary Judgment* filed on October 14, 2015 and the Defendants' *Motion for Continuance* filed on November 12, 2015. Counsel for the parties appeared in open court during the Court's regularly scheduled Motion Hours on Monday, November 16, 2015 and then again on Monday, February 8, 2016. The Court being sufficiently advised hereby **GRANTS** summary judgment in favor of the Plaintiff and **DENIES** the Defendants' *Motion for Continuance*. The Court **ORDERS** the Defendants to comply with the Agreed Order in the manner described at the end of this Opinion and Order. The Court **ASSESSSES** a civil penalty of seventy-five thousand dollars (\$75,000.00) pursuant to KRS 224.99-010(1), together with post-judgment interest thereon at the rate of twelve percent (12%) per annum from the date of judgment until paid in full. Finally, the Court orders the Defendants to pay one hundred and twenty-six dollars (\$126.00) in filing fees directly to the Franklin Circuit Court.

**STATEMENT OF FACTS**

On May 19, 2014, the Plaintiff Energy and Environment Cabinet ("Cabinet") initiated this suit in order to enforce an Agreed Order entered into among the Cabinet and

the Defendants on October 19, 2009. The Defendants include Ridgelea Investments Corporation ("Ridgelea"), its president and primary shareholder Charles G. Hungler, Jr. ("Chuck Hungler"), Charles G. Hungler, III, and Terrence L. Hungler.

Ridgelea owns four (4) waste water treatment plants ("WWTP"), three of which are located in Franklin County serving the Farmgate subdivision ("Farmgate WWTP"), the Edgewood subdivision ("Edgewood WWTP"), and the Meadowbrook subdivision ("Meadowbrook WWTP"). Ridgelea also owns a WWTP in Grant County serving the Grantland Estates subdivision ("Grantland WWTP"). Chuck Hungler, the president of Ridgelea, also owns and operates Perfect-A-Waste Sewage Equipment Co. ("Perfect-A-Waste"). The Defendants Terrence Hungler and Charles Hungler III are wastewater treatment operators employed by Perfect-A-Waste.

On August 1, 2009, the Defendants signed an Agreed Order with the Cabinet settling several active cases before the Division of Water.<sup>1</sup> The actions were initiated in order to permanently suspend the Defendants' wastewater treatment plant operators' licenses for numerous violations issued by the Cabinet with respect to the Defendants' operation of their WWTPs. The Agreed Order was entered into in lieu of permanently suspending the licenses of Terrence Hungler and Charles Hungler III. The Cabinet now alleges that the Defendants are in violation of three separate sections of the Agreed Order, specifically, Paragraphs eleven (11), thirteen (13), and fifteen (15).

Paragraph eleven (11) of the Agreed Order required the Defendants to take several actions in order to correct problems with each of the three WWTPs located in Franklin County. The actions are as follows:

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<sup>1</sup> File Nos. DOW-28428-047; DOW-28429-047; DOW-28430-047; and DOW-28846-047.

- Initiate an inflow and infiltration (“I & I”) study and submit the study to Cabinet with proposed corrective action recommendations for the Franklin WWTPs for approval. The study was to commence within sixty (60) days of the entry of the Agreed Order, or within sixty (60) days of receiving a final order from the Public Service Commission (“PSC”) related to a rate increase or surcharge to pay for the study, but no later than one hundred eighty (180) days after the entry of the Agreed Order.
- Submit a corrective action plan (“CAP”) based upon the recommendations from the I & I study, along with a schedule for implementation for Cabinet approval within sixty (60) days of completing the I & I study.
- Revise and resubmit a CAP within sixty (60) days of receiving comments from the Cabinet identifying deficiencies.
- Complete any necessary corrective action within two (2) years of date of the receipt of the I & I study.<sup>2</sup>

The Defendants made some initial progress toward satisfying these steps. They submitted an I & I study for the Meadowbrook subdivision on May 23, 2012 and a revised I & I study and CAP on October 22, 2012. They also submitted an I & I study for the Farmgate subdivision on October 19, 2013. The Defendants did nothing more with respect to either the Meadowbrook or Farmgate subdivisions. The Defendants did not submit any studies, plans, or make any corrective actions with respect to the Edgewood subdivision.

Paragraph thirteen (13) of the Agreed Order also required the Defendants to use an approved laboratory to collect and analyze all samples at any WWTP in Kentucky which was operated by the Defendants. The Cabinet alleges that “through at least February 19, 2014, Perfect-A-Waste operated the Grantland WWTP and used a non-approved laboratory to collect and analyze samples.”<sup>3</sup>

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<sup>2</sup> Plaintiff’s Complaint, filed on May 19, 2014, pp 3-4; Agreed Order, entered Oct. 19, 2009, pp. 4-5.

<sup>3</sup> Plaintiff’s Complaint, filed on May 19, 2014, p. 5.

Finally, Paragraph fifteen (15) of the Agreed Order required Ridgelea to employ an independent and properly certified operator residing within fifty (50) miles of each of the three Franklin County WWTPs. The Cabinet alleges that it was notified by Ridgelea's independent certified operator that he was no longer operating any of the three Franklin County WWTPs as of August 13, 2013.

In its Complaint filed on May 19, 2014, the Cabinet alleges four counts against the Defendants, the first three of which correspond with the violation of each of the three sections of the Agreed Order described above. The fourth count relates to KRS 224.99-010(1) which provides that "Any person . . . who violates any order of the cabinet . . . shall be liable for a civil penalty not to exceed the sum of twenty-five thousand dollars (\$25,000) for each day during which such violation continues . . . ."

Also in its Complaint, the Cabinet requested that the Court order Ridgelea to complete all unfinished remedial measures pursuant to a schedule to be set by the Court. The Cabinet also requested that the Court order Ridgelea to employ independent certified wastewater operators for its Franklin County WWTPs who are capable of being onsite at the Edgewood WWTP within one hour and the Farmgate and Meadowbrook WWTPs in two hours. Next, the Cabinet requests that the Court order the Defendants to employ certified laboratories for collecting and analyzing samples at any facility owned or operated by any of the Defendants where the Defendants are responsible for providing laboratory services. Finally, the Cabinet requests that the Court assess a civil penalty pursuant to KRS 224.99-010(1) and Court costs.

The Cabinet filed a *Motion for Summary Judgement* on October 14, 2015. The Defendants responded with a *Motion for Continuance* on November 12, 2015, which the

Court ordered held in abeyance on November 18, 2015 pending the Defendants filing a response to the Cabinet's summary judgment motion and the filing of the Defendants' *Motion for Abandonment*. The Defendants never filed a *Motion for Abandonment*. However, they did respond to the Cabinet's summary judgment motion on January 7, 2016, to which the Cabinet replied on February 1, 2016.

## ANALYSIS

### 1. Summary Judgment Standard of Review

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." CR 56.03. Summary judgment is appropriate when the court concludes that there is no genuine issue of material fact for which the law provides relief. *Id.* Summary judgment may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. *Id.*

The moving party bears the initial burden of showing the non-existence of a genuine issue of material fact, and the burden then shifts to the opposing party to show affirmatively that there is a genuine issue of material fact for trial. *Jones v. Abner*, 335 S.W.2d 471, 475 (Ky. Ct. App. 2011). The movant should not succeed unless it has shown "with such clarity that there is no room left for controversy." *Steelvest, Inc. v. Scansteel Service Ctr.*, 807 S.W.2d 476, 482 (Ky. 1991). "The inquiry should be whether, from the evidence on record, facts exist which would make it possible for the non-moving party to prevail. In the analysis, the focus should be on what is of record rather than what might be presented at trial." *Welch v. Am. Publ'g Co. of Kentucky*, 3 S.W.3d 724, 730 (Ky. 1999). In reviewing

Motions for Summary Judgment, the Court views all facts in the light most favorable to the non-moving party and resolves all doubts in its favor, and summary judgment should only be granted when the facts indicate that the non-moving party cannot produce evidence at trial that would render a favorable judgment. *Steelvest*, 807 S.W.2d at 480.

The Court recognizes that summary judgment is a device that should be used with caution and is not a substitute for trial. “[T]he proper function of summary judgment is to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor.” *Jones*, 335 S.W.3d at 480. Thus, this Court finds that summary judgment will be proper when it is shown with clarity from the evidence on record that the adverse party cannot prevail, as a matter of law, under any circumstances.

2. *The Defendants Violated Paragraph Eleven Because They Have Not Completed the Necessary Remedial Measures on the WWTPs.*

As indicated above, the Cabinet makes three allegations against the Defendants with respect to the Agreed Order. The Cabinet first alleges that the Defendants violated Paragraph eleven because they have not completed the necessary remedial measures on the WWTPs. The Defendants, for their part, insist that the requirements of Paragraph eleven, if implemented, would violate Section 2 of the Kentucky Constitution which prohibits the exercise of “[a]bsolute and arbitrary power over the lives, liberty and property of freemen.” Specifically, the Defendants argue that the total cost of all the repairs “are not realistic and are impossible to pay or finance with the income and assets of Ridgelea.”<sup>4</sup> The Defendants state that the total income for their three facilities (presumably, the Franklin County

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<sup>4</sup> Defendant’s Response to Plaintiff’s Motion for Summary Judgment filed on Jan. 7, 2016, p. 2.

WWTPs) is \$76,000 while they estimate the costs and repairs to be \$212,250.00. They add that, “[a]t the time Chuck Hungler signed the Agreed Order on behalf of Ridgelea, he was not aware of the total potential cost of either the I & I studies for all three facilities or the cost of making the repairs the studies might require . . . .”<sup>5</sup>

However, regulatory compliance is a cost of doing business. And unlike other businesses, the Defendants are uniquely positioned to finance the remedial measures through surcharges authorized by the Public Service Commission (“PSC”). Indeed, the PSC has already granted Ridgelea a surcharge to fund the I & I studies required by the Agreed Order.<sup>6</sup> However, Ridgelea does not explain why it cannot again apply to the PSC for additional rate increases or surcharges to complete the I & I repairs identified by the studies. Second, the Defendants, specifically Ridgelea, willingly entered into the Agreed Order. In doing so, they found the risk and cost of continued litigation at that time to be greater than the cost of making the repairs. The Cabinet deftly summarized Ridgelea’s predicament:

Ridgelea’s (or any other corporation’s) financial ability to perform under the terms of the agreements it makes is simply a business issue. The Defendants have all benefitted from the Agreed Order, whether by retaining certifications or being allowed a *significant* amount of time to fund and repair their assets. The Cabinet is now seeking to get the benefit it bargained for. The fact that the necessary repairs to Ridgelea’s assets cost more than Ridgelea thought it would when it signed the Agreed Order, and that Ridgelea had not arranged financing through PSC or the private market are merely reflections on business decisions, not Constitutional violations. More importantly, for the purposes of the Cabinet’s Motion, the cost to perform the required repairs

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<sup>5</sup> Defendants’ Response to the Plaintiff’s Motion for Summary Judgment, filed on Jan. 7, 2016, p. 2.

<sup>6</sup> Moreover, the costs of the studies and the repairs – indeed, even their financing – was contemplated by the parties in Paragraph eleven (11) of the Agreed Order. “Ridgelea shall have the right to pay for any corrective action for I & I problems through a rate increase or surcharge approved by the P.S.C.”



are not disputed issues material of fact, but rather excuses for Ridgelea's past non-performance.<sup>7</sup>

Thus, the Court finds that Ridgelea has failed to comply with the study and implementation requirements agreed to in Paragraph eleven. As a result, the Court orders Ridgelea to comply with the schedule found at the end of this Opinion.

*3. The Defendants Violated Paragraph Thirteen by Failing to Contract with One of the Cabinet-Approved Laboratories at Grantland WWTP.*

The Cabinet next alleges that the Defendants – i.e., not just Ridgelea but also all three of the Hunglers – violated Paragraph thirteen (13) of the Agreed Order “by failing to employ one of the laboratories pre-approved by the Agreed Order and by not obtaining approval for the laboratory which collected and analyzed samples at the Grantland WWTP through at least February 19, 2014.”<sup>8</sup> The Cabinet requested that the “Defendants be ordered employ [sic] certified laboratories for collecting and analyzing samples at any facility owner or operated by any of the Defendants where the Defendants are responsible for providing laboratory services.”<sup>9</sup>

Terrence Hungler operated the Grantland WWTP as part of his employment for Perfect-A-Waste. He contracted with Wastewater Service & Lab to collect and analyze samples at the Grantland WWTP. However, the Agreed Order only permits the Defendants to retain one of three named laboratories – Wastewater Service & Lab was not among them. In their Response, the Defendants asserted that Ridgelea now uses Fouser, an approved

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<sup>7</sup> Plaintiff's Reply to Defendants' Response to the Plaintiff's Motion for Summary Judgment, filed on Feb. 1, 2016, p. 5.

<sup>8</sup> Plaintiff's Complaint filed on May 19, 2014, p. 7.

<sup>9</sup> *Id.*, at p. 9. (Emphasis added). Indeed, Paragraph thirteen reads, “It is agreed McCoy & McCoy Laboratories, Inc. and Appalachian States Analytical, LLC and Fouser be retained to collect and analyze all samples at all Kentucky facilities operated by Perfect-A-Waste or any other company, affiliate or entity owned by the individual Hunglers, where Perfect-A-Waste or any such affiliates (other than the owner of said facility) are responsible for providing laboratory services.”

laboratory. The Defendants did not deny using an unapproved laboratory at the Grantland WWTP. Even if Fouser is in fact the current laboratory currently used at the Grantland WWTP, the Defendants, specifically Terrence Hungler, violated the Agreed Order by using an unapproved laboratory at the Grantland WWTP for at least some period of time following the entry of the Agreed Order.

*4. The Defendants Violated Paragraph Fifteen Because They Failed to Employ an Independent Operator Who Lived Within Fifty (50) Miles of any of the Franklin County WWTPs.*

The Cabinet final allegation with respect to the Agreed Order is that the Defendants violated Paragraph fifteen (15) of the Agreed Order because they failed to employ an independent operator who lived within fifty miles of any of the Franklin County WWTPs. Paragraph fifteen (15) provides that “[t]he three (3) Waste Water Treatment Plants in Franklin County, Kentucky shall be operated by *independent*, properly certified operator, but subject to the terms set forth herein. Said operator shall reside within fifty (50) miles of the three (3) plants.” (Emphasis added). The Defendants insist that they are not in violation of Paragraph fifteen (15) because Paragraph fifteen (15) was based on an administrative regulation that has since been modified; now, rather than being required to live within fifty (50) miles, the operator must be able to reach the WWTPs within one or two hours, depending on the type of WWTP. 401 KAR 5:010 Section 3(2).

The Defendants admit that the operator of the three Franklin County Plants, Terrence Hungler, lives farther than fifty miles; however, they argue that there is an issue of fact as to whether he lives within a one or two hour drive of the plants. This is relevant, the Defendants argue, because the Cabinet in its prayer for relief requested that the Court order the Defendants to employ an operator who is capable of being onsite of the Edgewood

WWTP within one hour and within two hours for the Meadowbrook and Farmgate WWTPs. However, this argument is easily dispensed with for two reasons: First, the Cabinet's Prayer for Relief differs from the Agreed Order because the regulation upon which the Cabinet based Paragraph fifteen (15) has since been modified to account for time traveled rather than distance. *See* 401 KAR 5:010 Section 3(2).<sup>10</sup> Second, the Defendants are still in violation of the Agreed Order because Terrence Hungler lives farther than fifty (50) miles away.

Still, even if the Defendants could somehow successfully argue that 401 KAR 5:010 Section 3(2) supersedes Paragraph fifteen, the fact remains that Terrence Hungler is not an "independent" operator under any meaning of that word. Indeed, Terrence Hungler is a party to both the Agreed Order and this suit; he is an employee of Perfect-A-Waste which is owned by his brother, Chuck Hungler. Thus, the Court finds that the Defendants violated Paragraph fifteen of the Agreed Order by failing to employ an *independent* operator who lived within fifty miles of the Franklin County WWTPs.

5. *The Defendants Are Jointly and Severally Liable for Violations of the Agreed Order Pursuant to KRS 224.99-010(1).*

The Cabinet's last allegation is that the Defendants are liable for the statutory penalties provided for in KRS 224.99-010(1) for any violation of the Agreed Order.<sup>11</sup> The Defendants, however, insist that "Charles Hungler III and Terrence Hungler are not proper

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<sup>10</sup> "The facility shall ensure that a certified operator with primary responsibility shall be capable of being onsite: (a) Within two (2) hours if the certified operator with primary responsibility is required to have a Class I or Limited certificate; or (b) Within one (1) hour if the certified operator with primary responsibility is required to have a Class II, III, or IV certificate."

<sup>11</sup> "Any person . . . who violates any order of the cabinet . . . shall be liable for a civil penalty not to exceed the sum of twenty-five thousand dollars (\$25,000) for each day during which such violation continues . . ."

Defendants for the relief sought by” the Cabinet.<sup>12</sup> In support of this argument, the Defendants cite Paragraph nine (9) of the Agreed Order which states that “[t]he Cabinet agrees to dismiss the above-styled license revocation actions against Terrance [sic] Hungler and Charles G. Hungler, III, with prejudice.” The Defendants also note that “[a]ny work performed for Ridgelea is performed at the direction of its owner, Chuck Hungler.”<sup>13</sup>

However, simply because the Cabinet agreed to dismiss the license revocation actions against Terrence Hungler and Charles G. Hungler III does not mean that they are no longer bound by the terms of the Agreed Order, or that those terms cannot be enforced against them. On the contrary, Paragraph seven of the Agreed Order provides that “the parties hereby consent to the entry of an Agreed Order pursuant to the following terms and conditions.” As noted by the Cabinet in its Reply, Paragraphs ten, twelve, thirteen, and fifteen apply equally to *all* Defendants; some terms and conditions of the Agreed Order apply *only* to Ridgelea. The Cabinet’s Prayer for Relief in its Complaint recognizes this fact. The Court finds that all parties were involved in committing violations of the Agreed Order. As a result, all parties are jointly and severally liable under KRS 224.99-010(1) for violations of the Agreed Order.

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<sup>12</sup> Defendants’ Response to Plaintiff’s *Motion for Summary Judgment*, filed on January 7, 2016, p. 2. The Defendants made substantially the same argument during proceedings before the Division of Water. It was reflected in Paragraph five (5) of the Agreed Order, which reads as follows: “The Defendants have alleged the action of the Cabinet in this case is without merit as to Charles G. Hungler III and Terrance [sic] Hungler because no significant violations were found by the Cabinet specifically concerning the waste water treatment plants (WWTPs) which they operated.” However, in Paragraph six (6), “[t]he Defendants concede there is significant factual evidence to support the suspension of Charles G. Hungler Jr.’s waste water treatment certification.” The Defendants’ argument notwithstanding, they still agreed to be bound by the terms of the Agreed Order.

<sup>13</sup> *Id.*

### CONCLUSION

The Court finds that the Defendants violated three separate Paragraphs of the Agreed Order. First, the Defendants violated Paragraph eleven (11) by failing to complete and submit I & I studies for the Farmgate and Edgewood WWTPs and by failing to implement any remedial measures at any of the three Franklin County WWTPs. Second, the Defendants violated Paragraph thirteen by failing to contract with one of the approved laboratories provided for in the Agreed Order at their Grantland WWTP. Finally, the Defendants violated Paragraph fifteen (15) by failing to employ an operator who was independent from the Defendants and who lived within fifty miles of the Franklin County WWTPs. For these reasons, the Court grants the Cabinet the relief described below and assesses a penalty totaling \$75,000 pursuant to KRS 224.99-010(1) – \$25,000 for each of the three violations.

**WHEREFORE** the Cabinet's *Motion for Summary Judgment* is **GRANTED** and the Defendants' *Motion for Continuance* is **DENIED**. The Defendant Ridgelea is hereby **ORDERED** to do the following:

- Implement the corrective action plan already approved by the Cabinet for the Meadowbrook WWTP within thirty (30) days of the entry of this judgment;
- Submit a revised I & I study responding to the Cabinet's October 30, 2013 [sic] for the Farmgate WWTP comments, along with an approvable corrective action plan and schedule for implementation within thirty (30) days of the entry of this judgment;

- Implement the Farmgate WWTP corrective action plan within thirty (30) days of receiving written approval from the Cabinet;
- Complete and submit the I & I study of the Edgewood WWTP along with any proposed corrective action plan and schedule of implementation to the Cabinet for review and approval within ninety (90) days of the entry of the judgment;
- Revise and resubmit, if necessary, the Edgewood I & I study, corrective action plan, and schedule of implementation within thirty (30) days of receiving written comments from the Cabinet; and
- That Ridgelea implement the approved Edgewood WWTP corrective action plan within thirty (30) days of receiving written approval from the Cabinet.

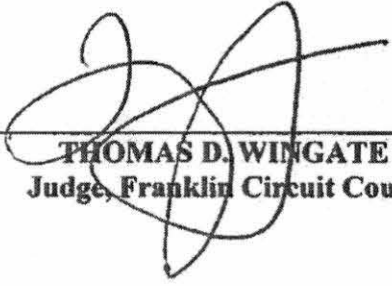
The Defendant Ridgelea is also hereby **ORDERED** to comply with Paragraph fifteen (15) of the Agreed Order requiring it to employ an independent certified wastewater operator or operators for its Franklin County WWTPs. Pursuant to 401 KAR 5:010 Section 3(2), the operator or operators must be capable of being onsite at the Edgewood WWTP within one (1) hour and within two (2) hours at the Farmgate and Meadowbrook WWTPs.

All of the Defendants are hereby **ORDERED** to employ certified laboratories for collecting and analyzing samples at any facility owned or operated by any of the Defendants where the Defendants are responsible for providing laboratory services.

The Defendants are hereby **ASSESSED** a civil penalty of **seventy-five thousand dollars (\$75,000)** pursuant to KRS 224.99-010(1), together with post-judgment interest thereon at the rate of twelve percent (12%) per annum from the date of judgment until paid

in full. The Defendants are also **ORDERED** to pay one hundred and twenty-six dollars (\$126) in filing fees directly to the Franklin Circuit Court.

**SO ORDERED**, this 6<sup>th</sup> day of April, 2016. This *Order* is final and appealable and there is no just cause for delay.



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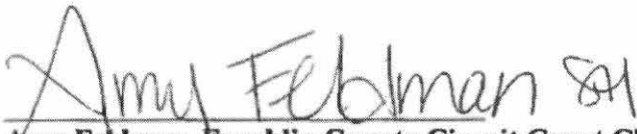
THOMAS D. WINGATE  
Judge, Franklin Circuit Court

**CERTIFICATE OF SERVICE**

hereby certify that a true and correct copy of the foregoing Order was mailed,  
this 8th day of April, 2016, to the following:

**Hon. John B. Baughman**  
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